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2013 IL App (3d) 120217-U

Order filed June 13, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

DEUSTCHE BANK NATIONAL TRUST)	Appeal from the Circuit Court
COMPANY, AS TRUSTEE OF)	of the 12 th Judicial Circuit,
AMERIQUEST MORTGAGE SECURITIES)	Will County, Illinois,
INC. ASSET BACKED PASS-THROUGH)	
CERTIFICATES SERIES 2005 R10 UNDER)	
POOLING AND SERVICING)	
AGREEMENT DATED NOVEMBER 1,)	
2005,)	Appeal No. 3-12-0217
)	Circuit No. 11-LM-2990
Plaintiff-Appellee,)	
)	
v.)	
)	
ZLATKO NIKSICH,)	Honorable
)	Mark Thomas Carney,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Wright and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* A forcible entry and detainer action is a limited and distinct proceeding that determines who is entitled to immediate possession of real property. Because forcible entry and detainer actions are summary in nature, matters such as serious title disputes that are not germane to the issue of possession may not be raised

¶ 2 Plaintiff, Deutsche Bank National Trust Co., brought this action seeking to evict plaintiff, Zlatko Niksich, from a property (the Property) that was the subject of a prior foreclosure action. The circuit court granted summary judgment in favor of plaintiff. We affirm.

¶ 3 FACTS

¶ 4 Foreclosure Proceeding

¶ 5 Plaintiff brought a foreclosure action (the Foreclosure Proceeding) in regard to the Property. On February 26, 2007, plaintiff obtained ownership rights to the Property via an order approving sale. Pursuant to the order approving sale, plaintiff was "entitled to possession of the Property 30 days after entry of [the] Order." Defendant was not personally named in the Foreclosure Proceeding, however, he was a party to the action as a non-record claimant.

¶ 6 Defendant filed a *pro se* motion to vacate the judgment of foreclosure. Defendant alleged that he had placed the property in trust and that his daughter Bozica Niksich, acting alone, took out a mortgage on the property without title, then refinanced the mortgage without his knowledge, consent or authority. On plaintiff's motion, the circuit court dismissed defendant's motion, but granted him leave to amend.

¶ 7 Defendant filed an amended motion to vacate, asserting that he was the owner of the property and that plaintiff, then Ameriquest, acted through its agent, Tristar, to knowingly draft and sign a fraudulent quitclaim deed. Ameriquest then allegedly concealed the recording of the allegedly forged document. Defendant further contended that a Tristar employee contacted him in November 2005 and requested that he sign a backdated quitclaim deed that added Bozica to the title of his home. The circuit court dismissed defendant's amended motion and defendant appealed.

¶8 On appeal, we affirmed the circuit court's judgment. *Deutsche Bank National Trust Co. v. Nicksich*, 3-09-0259 (2010) (unpublished order pursuant to Supreme Court Rule 23).

Specifically, we found that defendant failed to allege a meritorious defense of fraud because defendant failed to (1) "establish[] the existence of an agency relationship between Tristar and Ameriquest," (2) "establish a meritorious defense based on forgery," (3) "properly plead and establish fraud" and (4) "attach an affidavit" in support of his claims. *Nicksich*, 3-09-0259 (2010) (unpublished order pursuant to Supreme Court Rule 23).

¶9 Quiet Title Proceeding

¶10 Defendant also filed an action to quiet title (the Quiet Title Proceeding). This action set forth many of the same arguments contained in the Foreclosure Proceeding. On plaintiff's motion, the circuit court dismissed defendant's action with prejudice on the grounds that defendant's quiet title action was barred under the doctrine of *res judicata*. It does not appear that defendant appealed this dismissal.

¶11 Eviction/Current Proceeding

¶12 On October 3, 2011, more than four years after the order approving sale was entered in the Foreclosure Proceeding, plaintiff filed a complaint for forcible entry and detainer seeking possession of the property against defendant and all other unknown occupants. Plaintiff filed a motion for summary judgment, evidenced its ownership and superior possessory interest in the subject property by attaching the order approving sale. The motion also asserted that defendant should be collaterally estopped from making any arguments previously raised in the Foreclosure Proceeding or Quiet Title Proceeding.

¶13 Defendant also filed a motion for summary judgment arguing (1) that he had exclusive

right to title of the property based on his allegations of title fraud brought in the Foreclosure Proceeding and Quiet Title Proceeding, and (2) the denial of his amended motion to vacate in the Foreclosure Proceeding was not a judgment against him as the record was devoid of plaintiff being a personally named party prior to judgment. Upon review, the circuit court granted plaintiff's motion for summary judgment and entered an order of possession in favor of plaintiff. Defendant appeals.

¶ 14

ANALYSIS

¶ 15 On appeal, defendant argues that the circuit court erred in granting summary judgment for plaintiff. Defendant asserts that summary judgment should not have been granted because genuine issues of material fact remain as to who is the rightful title owner of the Property. Defendant believes a question of fact still remains, even in light of the final orders in the Foreclosure and Quiet Title Proceedings, because no judgment on the merits was allegedly ever entered against him with regard to title. In making this claim, defendant calls our attention to the fact that he was not personally named in the Foreclosure Action and thus his title arguments were only contained in a motion to vacate as opposed to the pleadings on which the foreclosure judgment was actually entered. Defendant also notes that his title claims were never heard in the Quiet Title Proceeding due to the application of the doctrine of *res judicata*. We review *de novo* an order granting summary judgment. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010).

¶ 16 Recently, this court, in *Wells Fargo Bank v. Watson*, 2012 IL App (3d) 110930 ¶ 14-15, explained the limited scope of a forcible entry and detainer action.

"The purpose of the Forcible Entry and Detainer Act (Act)

is to provide a speedy remedy to allow a person who is entitled to the possession of certain real property to be restored to possession. [Citation.] A forcible entry and detainer action, therefore, is a limited and distinct proceeding that determines who is entitled to immediate possession of real property. [Citation.] Because forcible entry and detainer actions are summary in nature, matters that are not germane to the issue of possession may not be raised. [Citation.] Thus, 'the only factual questions which need be answered in such a proceeding are which party is entitled to immediate possession and whether a defense which is germane to the distinctive purpose of the action defeats plaintiff's asserted right to possession.' [Citation.]

'Germane matters' are those that are closely connected with, and relevant to, the issue of possession [citation] and generally fall into one of four categories: '(1) claims asserting a paramount right of possession; (2) claims denying the breach of the agreement vesting possession in the plaintiff; (3) claims challenging the validity or enforceability of the agreement on which the plaintiff bases the right to possession; or (4) claims questioning the plaintiff's motivation for bringing the action.' [Citation.] Serious title disputes, however, may not be determined in a forcible entry and detainer action. [Citation.]"

¶ 17 In the present case, at the summary judgment hearing, the trial court had before it a judgment of foreclosure that clearly entitled plaintiff to possession. Although defendant was not personally named in the Foreclosure Proceeding, he was a party to the action as a non-record claimant. In addition, the substance of defendant's current summary judgment title claims were previously heard and rejected in his motion to vacate the foreclosure judgment. We subsequently affirmed the dismissal of his motion to vacate (title claims). *Niksich*, 3-09-0259 (2010) (unpublished order pursuant to Supreme Court Rule 23). Based upon the evidence that was presented, it was proper for the trial court to grant summary judgment for plaintiff on its forcible entry and detainer complaint. "The matters asserted by defendant in opposition to plaintiff's motion for summary judgment were not germane to the issue of possession but, rather, constituted a collateral attack on the mortgage foreclosure judgment." *Watson*, 2012 IL App (3d) 110930 ¶ 16. Defendant's assertions, therefore, were properly rejected by the circuit court. See *Watson*, 2012 IL App (3d) 110930 ¶ 16.

¶ 18 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 19 Affirmed.